IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 796 OF 2003

Mohamad Husain A.R.Kazi & Ors. .. ..Appellants

Versus

Hasan I Kazi & Ors. .. ..Defendants

Shri H.R.Sharma for Appellants

Shri J.K.Jadhav for Respondent Nos.1 to 3

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2004.

P.C.:

1. This is an appeal preferred by the Appellants-Plaintiffs against the judgment and order passed by District Judge, Ratnagiri in Civil Appeal No.93 of 1999 dismissing the Appeal against the Order of dismissal of the suit passed by Civil Judge, Junior

Division, Ratnagiri in Civil suit No.122 of 1996.

2. I heard the learned counsel for both the sides. Perused the record.

. The Appellants-Plaintiffs have come with a case that they are owners of the house No.528 in village Pawas, Tal. and Dist. Ratnagiri and respondents are owners of the house No.529. There are two windows admeasuring 3’ x 3’ in southern side wall of the appellants house from where they use to get air and light. It is the case of the Appellants that the Respondents demolished their old house and started new construction of building closely touching to the southern side of wall of the appellants and thereby encroached upon the easementary rights of the appellants in that manner. Hence the Civil Suit (Regular Civil Suit No.122 of 1996) was filed in the Court of Civil Judge, Junior Division, Ratnagiri. The learned civil judge adjudicated the matter on merits and dismissed the suit by order dated 6.10.1999. The appellants preferred an appeal being Appeal No.93 of 1999 in District Court, Ratnagiri, however, that appeal also came to be dismissed confirming the order passed by the civil

Court. Hence the present appeal.

3. At the outset it may be noted that the Civil Court raised various issues while adjudicating the suit and concluded that the plaintiffs have failed to prove that there was distance between the suit house and defendants' house by about 5 to 10 feet. The plaintiffs have also failed to establish their easementary right of taking air and light through the southern side windows of suit house and as such the suit came to be dismissed on that count. The learned District Judge has confirmed the findings of the lower court on the basis of available evidence including that of Court Commissioner Report, who was appointed to record the position and situation on the spot. The learned District Judge also endorsed to the view that there was no evidence on record to show that the plaintiffs have any easementary right in their favour as against the defendants and therefore, there was no question of obstruction thereto and hence the appeal came to be dismissed.

4. On perusal of the entire record available for me I do not see any reason why this appeal should be entertained as there is no substantial question of law

involved. As laid down by the Supreme Court in the case of Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Ors. AIR 1999 Supreme Court 2213 that it is not within the domain of the High court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In the present case before us there is absolutely no error is found to have committed by both the courts below on any question of law, therefore, the appeal is liable to be dismissed.

. In the result the appeal stands dismissed.